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W.P.No.10873 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.10873 of 2021

G.A.Venkatesan

.. Petitioner

VS

1.The Deputy Director (I),
O/o. Director of Town and Country Planning,
Opp. Government ITI Polytechnic,
Chennimalai Road,
Erode District - 638 009.

2.The Block Development Officer,
(Grama Panchayat),
Panayampalli Panchayat,
Bhavanisagar Union Block,
Sathyamangalam Taluk,
Erode District - 638 451.

3.The Panchayat President,
Panayampalli Village Panchayat,
Sathyamangalam Taluk,
Erode District - 638 459.

4.S.Jaganathan

5.The District Collector,
Erode.
(R5 suo motu impleaded
vide order dated 08.08.2023)

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the 1st respondent's proceedings bearing Na.Ka.No.234/2020/E.D-2, dated 18.03.2021 quash the same.

For Petitioner : Mr.P.H.Arvind Pandiyan,
Senior Advocate
for Mr.Roshan Atiq

For Respondents : Mr.M.Elumalai, for R1
Mr.UM.Ravichandran, SGP
for R2, R3
R4 - No appearance

ORDER

There is no appearance for R4 despite several opportunities having been granted to file a counter. In fact one Mr.Venkatesan had appeared on earlier occasions and had assured the Court that vakalat and counter will be filed. However, there is no response till date.

2. The petitioner, is the owner of stone bearing patta lands ad-measuring 2.06.0 hectares in Survey No.567/2B and 2.43.0 hectares in Survey No.567/2A in Panyampalli Village, Sathyamangalam Taluk, Erode District (land in question). He had obtained stone quarrying leases from the District Collector and lease



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agreements have been executed on 19.02.2007 and 30.05.2009, which have been extended upto date. The quarries are stated to be in operation currently.

3. While so, the erstwhile owner of the lands adjoining the land in question had sold those lands to R4, who had sought for, and had been granted layout approval in respect of the adjoining patta lands ad-measuring 8.29 acres comprising in Survey Nos. 558/1, 558/2, 558/3, 558/4 and 558/5 and is developing the same.

4. The petitioner submits that such development is contrary to the provisions of Rule 36 (1-A)(c) of the Tamil Nadu Minor and Mineral Concession Rules, 1959 (Rules), which require clearance from the Director of Geology and Mining in respect of any layout or building falling within 300 meters from any quarry.

5. Mr.Aravind Pandian, learned Senior Advocate, appearing for Mr.Roshan Atiq, learned counsel on record, would, after adumbrating the relevant facts, rely on a decision of the writ court reported in 2020 SCC Online Mad 27852, *K.Rajkumar v Principal Secretary and Others* and batch, which he states has been passed in identical circumstances to that of the present writ petition.



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6. In that case as well, developmental activity had been commenced within the stipulated distance from the quarry and no clearance had been obtained from the authority. After considering a plethora of decisions on point, the clearance granted had been quashed bearing note of the mandate under Rule 36 (1-A) (c).

7. Mr.Elumalai, who appears for R1 would rely on the counter filed by R1. The entirety of the defence is premised on G.O.(Ms).No.78, Housing and Urban Development [UD(4)] Department dated 04.05.2017, especially Rule 4. That rule placed restrictions in the regularization of unapproved plots and layouts and it is the case of R1 that that G.O is consistently being applied and followed in all matters of regularization of unauthorized layouts.

8. That G.O does not contain any condition relating to prior clearance in the case of pre-existing quarries and hence there is no justification for this Court to intervene in the impugned order granting regularization, they urge.

9. Having heard learned counsel and applied my anxious



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consideration to the facts of the case as well as the provisions of law cited, my decision is as follows. It is an admitted position that the lease of the lands in question are current. The petitioner has produced an order of extension dated 14.03.2023. That extension reveals that, licence of validity till 29.06.2022 stands extended for a further period of 18 months from the date of execution of supplementary lease deed. Since the Environmental Assessment is on-going, no supplementary lease deed has been executed thus far.

10. However, it is the petitioner's contention that it is being permitted to carry on the quarry operations since the issuance of necessary clearances is pending at the instance of the authorities concerned and the Rules / Regulations permit the petitioner to carry on the activity in the interim period till such time necessary approvals had been granted and supplementary lease deed has been executed. Thus, the admitted position is that the petitioner continues to hold a valid quarry licence in terms of extension order dated 14.03.2023 passed by Commissioner of Geology and Mining.

11. I now come to Rule 36(1-A)(c). Rule 36 imposes general restrictions in respect of quarrying operations and 36(1-A)(c) reads



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as follows:-

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"36. General restrictions in respect of quarrying operations. -

....

36 (1-A) (a)

....

(c) No new layout, building plans falling within 300 meters from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. On receipt of proposals for according clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be, of any quarry which is situated within 300 meters from the new layout, buildings sought for such clearance."

12. Thus, there is a clear statutory embargo on developmental activity by way of new layout or a building falling within 300 meters from any quarry, except if prior clearance has been obtained from the Director of Geology and Mining. The embargo is clear and encompasses 'any agency'.

13. In the present case, the lands adjoining the quarry had been subject to layout formation even as early as in 2010. The petitioner had moved W.P.No.26822 of 2010 and an interim injunction had been granted on 03.12.2010. In that writ petition, the erstwhile owner of the adjoining lands had been arrayed as R3.



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14. He had filed an affidavit denying that any layout was being formed, stating that no application had been submitted for approval of layout or for putting up buildings. Recording the statement of R3 in that writ petition, the same came to be closed on 24.06.2011.

15. R4 in the present writ petition appears to have revived the earlier proceedings, applying for regularization of the layout leading to the issuance of impugned proceedings dated 18.03.2021 granting approval for a layout named Veera Aishwarya garden. In the interests of brevity, I need only refer to the recent judgment of Anand Venkatesh.,J in the case of K.Rajkumar (supra) on the same point as the present matter.

16. The earlier decisions in (i) *A. Velusamy v District Collector, Coimbatore* (2010) 3 CTC 57; (ii) *Jagannatha Samy vs District Collector, Coimbatore* W.P.No.22442/07 etc batch dated 19.12.2007 and (iii) *G.Sasikala v District Collector, Coimbatore* W.P.No.15414 of 2019 dated 17.07.2019 and judgment of the Hon'ble Supreme Court in *Tamil Nadu Building Material Manufacturers and Transport Association vs State of Tamil Nadu*



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C.A.No.6742 of 2001 have been referred to as supporting that petitioner, and are equally applicable in this matter.

17. In the judgment cited last, the Hon'ble Supreme Court has clarified that the embargo placed by virtue of Rule 36 (1-A)(c) would not come in the way of grant of quarrying licence if the habitation were unauthorized. That judgment was rendered in the context of the necessity to obtain sanction from the competent authority only if there was a habitation within specific distance from the location of the proposed quarry.

18. After consideration of those decisions that writ petition came to be allowed quashing the approval granted on the ground that it violated the condition of prior sanction. So too in the present case. In fact, the defence put forth is that no clearance is at all necessary, which is clearly contrary to the provisions of Rule 36(1-A)(c). Reliance on G.O.(Ms) No.78 dated 04.05.2017 is also misplaced for the reason that, that G.O. sets out Rules for regularization of unapproved layouts and plots and cannot override or efface specific conditions in other enactments.



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19. Rule 23, which has been cited by R1 states that the provisions of any other Rules regarding approval of plot, layout or sub-division that are inconsistent with the Rules, shall not apply to the regularization of plot, layout or sub-division. In my view, G.O.(Ms)No.78 in terms of which the regularization rules have been notified, are meant to enable a citizen to regularize structures constructed/developed in violation of the applicable Regulations.

20. On the other hand, the Tamil Nadu Minor and Mineral Concession Rules, 1959 provide, under Rule 36, for a specific Scheme for the operation of quarries and for measures to safeguard adjoining areas and habitation. Moreover, Rule 36 specifically uses the phrase 'any agency' and this would include R1 as well. Thus, though both the rules have been issued in public interest, the purpose of Rule 36 is specifically to protect the public against the deleterious effects of mining activity.

21. In the event of any conflict between the two, I would think that it is the Tamilnadu Minor and Mineral Concession Rules that must apply in preference to the regularization Rules. After all, the regularization rules are intended to come to the aid of a layout



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that is unapproved to begin with and hence such rules cannot be preferred.

22. For the aforesaid reasons, the impugned order is quashed and this writ petition is allowed. No costs. Connected W.M.P.No.11520 of 2021 is closed.

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Index: Yes/No
Neutral Citation: Yes
ssm

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DR. ANITA SUMANTH,J.

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